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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION

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DOCKET SECTION

Applications of

American Airlines, Inc.

and

Aerovias Nacionales de Colombia, S.A.

for exemptions pursuant to 49 U.S.C. 40109

Docket OST-97-208 1 - 2

Docket OST-97-2083 - 7

Joint Application of

American Airlines, Inc.

and

Aerovias Nacionales de Colombia, S. A.

statements of authorization pursuant to 14 C. F.R.
207 and 212

Undocketed

REPLY OF AEROVIAS NACIONALES DE COLOMBIA, S.A.

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Counsel to Aerovias Nacionales de Colombia,
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DATED: February 12, 1997

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

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Applications of)	
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American Airlines, Inc.)	
and)	Docket OST-97-2081
Aerovias Nacionales de Colombia, S. A.)	Docket OST-97-2083
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for exemptions pursuant to 49 U. S .C. 40109)	
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REPLY OF AEROVIAS NACIONALES DE COLOMBIA, S.A.

On February 3, 1997, Continental Airlines, Inc. (“Continental”), Emery Worldwide Airlines, Inc. (“Emery”), Delta Air Lines, Inc. (“Delta”) and United Air Lines, Inc. (“United”) filed answers opposing the pending application of Aerovias Nacionales de Colombia, S.A. (“AVIANCA”) and American Airlines, Inc. (“American”)

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seeking exemptions and statements of authorization to implement their codeshare agreement. AVIANCA hereby replies to these answers.'

The proposed codeshare represents an important and critical second milestone in the further development and expansion of the aviation relationship between the United States and Colombia. Building on the August 22, 1996 Memorandum of Consultations, the proposed codeshare will provide American with access to numerous Colombian points previously inaccessible to U.S. carriers, in addition to important beyond rights to other South American countries. Similarly, AVIANCA will be permitted to expand its services to the United States. The proposed codeshare is precisely the kind of vehicle that can and should serve as a building block in expanding opportunities for carriers of both countries and should be approved promptly.

A common theme of the answers filed in this proceeding is that insufficient reciprocity exists to justify approval of the proposed codeshare. In making this argument, Emery, Continental, Delta and United each ignore the fact that American will derive equivalent or even greater benefits from the codeshare than will AVIANCA. The question for decision is not whether each of the objecting carriers will immediately be able to operate unlimited flights to Colombia, for the United States has in the past approved numerous codeshare agreements involving limited-entry markets. The real

¹To the extent necessary, AVIANCA requests leave to reply to answers filed in response to AVIANCA's and American's undocketed joint application for statements of authorization.

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question is whether approval of the codeshare will generate sufficient and proportionate benefits for the United States and the traveling public. The answer to this question is quite clear--the United States and the traveling public will derive very substantial and real benefits from approval of the codeshare agreement.

The August 1996 Memorandum of Consultations between the United States and Colombia represented a significant advance in the U.S.-Colombia aviation relationship. Although the 1956 Air Transport Agreement between the two countries clearly limited new carrier service, the Colombian Government agreed in 1996 to permit certain increases in service notwithstanding the explicit limitations contained in the 1956 Agreement. As a result, American received the right to operate what the Colombian Government regarded as new service to Bogota. The Colombian Government agreed **further** that increases in scheduled all-cargo service would be permitted and that such services would not be subject to additional restrictions on frequencies or capacity. Moreover, Colombia agreed that additional increases in passenger and all-cargo services would be authorized and approved where warranted by market conditions. Each of these concessions to the United States by Colombia represented an important forward step in the bilateral aviation relationship between the two countries which must be considered fully in evaluating the proposed codeshare. Colombia's willingness to resolve its disagreement with the United States over the proper interpretation of the 1956 agreement

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through the August 1996 MOC is a significant positive factor and favors prompt approval of the proposed codeshare.

The proposed codeshare is another important step on the road to a more open aviation relationship between the United States and Colombia. Closely following the 1996 MOC, the codeshare represents a logical progression in the expansion of the two countries' aviation relationship. Under the codeshare agreement, American will receive access to numerous Colombian cities behind traditional Colombian gateway cities. In addition, American will gain beyond rights to cities in Venezuela, Argentina, Peru, Ecuador, Brazil and Chile, including important points such as Caracas, Buenos Aires, Santiago and Rio de Janeiro. AVIANCA, on the other hand, will gain access to a variety of U.S. cities currently without service to Colombia. The codeshare will thus provide carriers of both nations with significantly expanded service rights far beyond those contemplated under the 1956 Agreement or even under the 1996 MOC. Under these circumstances, there is clearly adequate reciprocity between Colombia and the United States.

An additional factor cited by Emery, Continental, Delta and United against approval of the proposed codeshare is the alleged harm that will result to competition in services between the United States and Colombia. Contrary to these carriers' assertions, however, competition will increase rather than decrease after approval of the codeshare. AVIANCA and American will price seats on their codeshare services independently and

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will compete vigorously with one another in selling seats on codeshare flights. Moreover, since both carriers will expand their services to new markets, travelling options will be increased. Consumers will reap the substantial benefits that flow from a choice of carriers when purchasing air transportation to and from points behind the United States and Colombian gateways served currently. The suggestion that approval of the codeshare will somehow decrease competition, while increasing service alternatives on existing routes and opening new routes to multi-carrier service, is illogical and ill-founded.

Continental, United and Delta argue further that the AVIANCA/American codeshare unfairly excludes other carriers from entering into codeshare agreements to serve Colombia and will thereby allegedly reduce competition, citing the agreement's Non-exclusivity clause as a basis for disapproval. The plain fact is that the Non-exclusivity clause in the AVIANCA/American codeshare agreement is no different than similar such clauses included in other codeshare agreements.* Indeed, United has previously entered into codeshare agreements that prohibit codesharing on routes between

²See, e.g., Section 7 of the Thai Airways--United Airlines Code Share and Regulatory Cooperation Agreement, filed with the Department on May 28, 1996 ('This Agreement is nonexclusive and does not preclude UA or TG from entering into or maintaining existing marketing relationships, including Code Sharing, with other carriers. Notwithstanding the preceding sentence, this Agreement is exclusive as it relates to code share over any of the city pairs as contemplated or provided for under this Agreement. "). See also Section 7 of the Air-India--United Airlines Code Share/Block Space and Regulatory Cooperation Agreement, filed with the Department on December 4, 1995.

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the United States and points located in entire regions, whether or not such points are served by the codesharing **partners**.³ In the face of these clear examples, it is hypocritical in the extreme for any of the objecting carriers to even suggest that **AVIANCA's** agreement with American may unfairly affect their abilities to enter into similar agreements.

The objecting carriers contend finally that Colombia's status as a Category 2 country under the Federal Aviation Administration's safety oversight program prohibits the Department from approving the proposed codeshare. This is untrue. The Department has previously approved codeshare authority in the case of a Category 2 country similar to that which AVIANCA has requested. In March 1996, the Department approved the application of Polskie Linie Lotnicze LOT S. A. for a statement of authorization permitting LOT to place American's code on LOT **flights**.⁴ This approval was granted after Poland had been placed in Category 2 by the FAA and after the Department issued its October 1995 policy statement clarifying how it would handle requests for operating authority involving Category 2 countries. Thus, despite the claims

³**Scandinavian** Airlines System--United Airlines Code Share Agreement, filed with the Department on September 26, 1995.

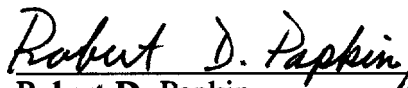
⁴*Application of Polskie Linie Lotnicze LOT S.A.*, Order 96-3-59, March 27, 1996.

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of United and Continental, the Department's precedent supports prompt approval of
AVIANCA's application.⁵

WHEREFORE, Aerovias Nacionales de Colombia, S.A. respectfully
requests that the Department of Transportation promptly approve its pending applications
for authority to codeshare with American Airlines, Inc.

Respectfully submitted,


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DATED: February 12, 1997

⁵In any event, AVIANCA understands that the Colombian Government has completed virtually all necessary steps to move from Category 2 to Category 1 and that the Government intends in the next several weeks to request that the FAA re-assess Colombia's oversight program.

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing Reply has this day been served via first class mail, postage prepaid, on each of the following persons.


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DATED: February 12, 1997

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